Before the U.S. Surface Transportation Board

STB Ex Parte No. 715

Rate Regulation Reforms

Comments of the

U.S. Department of Agriculture

Edward Avalos
Under Secretary
Marketing and Regulatory Programs
U.S. Department of Agriculture
Washington, D.C. 20250

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Authority and Interest

The Secretary of Agriculture is charged with the responsibility under the Agricultural Adjustment Act of 1938 and the Agricultural Marketing Act of 1946 to represent the interests of agricultural producers and shippers in improving transportation services and facilities by, among other things, initiating and participating in Surface Transportation Board (Board) proceedings involving rates, charges, tariffs, practices, and services.

Comments

The ability to appeal rail rates and practices is important to agricultural shippers and producers. Agricultural producers typically receive a price for their products which is net of transportation and many are dependent upon rail transportation to move those products to international and domestic markets.

Full-SAC rail rate appeal procedures are not appropriate for agricultural shippers because agricultural shippers utilize many origin-destination pairs rather than a few. As a result, a Full-SAC appeal for agricultural shippers is very complicated and costly relative to the expected returns.

Only the Simplified SAC and Three-Benchmark rate appeals procedures hold any promise of rate relief for agricultural shippers. These procedures have not been used by agricultural shippers because of the complexity and costs relative to the expected benefits.

For years, captive shippers, including agricultural shippers, have expressed concern over the Board's Stand-Alone Costs (SAC) rail rate appeals procedures. Specifically, agricultural shippers view them as too complex and costly for all but the largest coal and chemical shippers. In 1996, the Board responded by creating a simplified rail rate appeals procedure to provide a cheaper alternative for small shippers. The simplified rail rate appeals procedure, however, was never used by agricultural shippers.

Consequently, the Board held two proceedings to explore the issues involving simplified small case rate appeals procedures.[1] In September 2007, the Board responded to comments received during these proceedings by issuing a new simplified rail rate appeals procedure, Simplified SAC, and modifying its the Three-Benchmark procedure. Regarding the Simplified SAC procedures, the Board set a limitation on relief of $5 million over 5 years; it set a limitation on relief of $1 million over 5 years for the modified Three-Benchmark procedures.

During subsequent Board hearings, shippers raised concerns that the complexity, high cost, and limitations on relief for the simplified rate appeals procedures were dissuading parties from bringing rate disputes before the Board.[2] The current proceeding is the Board's response to those concerns. In this proceeding, the Board proposes to:

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[1] Ex Parte 646, Rail Rate Challenges in Small Cases, July 2004, and Ex Parte 646 (Sub No. 1) Simplified Standards for Rail Rate Cases, November 2006.

[2] Ex Parte 705, Competition in the Railroad Industry, May 2011.

- Remove the limitation on relief for cases brought under the Simplified SAC procedures,
- Double the relief available under the Three-Benchmark procedures to $2 million over a 5-year period,
- Curtail the use of cross-over traffic in full SAC cases,
- Modify the approach used to allocate revenue from cross-over traffic in full SAC and Simplified SAC appeals,
- Improve the accuracy of the Road Property Investment component of the Simplified SAC procedures, and
- Raise the interest rate that the railroads must pay to complainants for reparations when the railroad has collected unreasonable rates.

The Department of Agriculture (USDA) supports the Board's consideration of rail rate regulation reforms.

Simplified SAC Changes

USDA agrees with the Board that the limitations on relief for cases brought under the Simplified SAC procedures should be removed. In addition, USDA recommends that the prescribed rate be used for 10 years rather than only five. USDA notes that only one Simplified SAC rate appeal has been filed with the Board, and it was settled before adjudication by the Board. No agricultural shippers have attempted a Simplified SAC rate appeal due to its high costs and complexity relative to the limitations on relief. The lack of cases brought under the Simplified SAC procedures provides evidence that the current Simplified SAC procedures do not work for shippers.

USDA does not agree that the accuracy of the Road Property Investment component of the Simplified SAC procedures is something the Board should address. The Board admits this change would have the effect of adding complexity and costs to the Simplified SAC procedures. Adding additional costs and complexities may make a simplified SAC rate appeal even more inaccessible to some shippers who might otherwise consider it with the removal of limits on relief.

Three-Benchmark Procedures

USDA agrees that the relief available under the Three-Benchmark procedures should be increased to a minimum of $2 million over a 5-year period, and is not certain whether any cap is necessary. No agricultural shipper has appealed rates under the Three-Benchmark procedures, which indicates that the limitations on relief are set too low in relation to the costs of litigating these cases.

In addition, USDA is concerned with the Board's reliance upon the revenue-to-variable cost ratio for comparable shipments (R/VC_{Comp})[3] in the Three-Benchmark procedures. Carriers are increasing rates across the board for agricultural shippers. As a result, the Three Benchmark procedures that rely on R/VC_{Comp} to determine whether a rail rate is reasonable are undermined. The Board could expand the comparability requirement to allow inclusion of similar movements on other railroads or other commodities that have similar operating characteristics. Another way of correcting this may be to cap the amount of increase allowed in a comparison group or to place an upper limit on the R/VC_{Comp} that can be included in the comparison group. A final way to correct this weakness in the Three-Benchmark procedure may be to eliminate the use of R/VC_{Comp} and rely upon only R/VC_{RSAM}[4] and $R/VC_{>180}$[5].

Interest Rate Change

Finally, USDA agrees that the Board should raise the interest rate that the railroads must pay to complainants for reparations when the railroad has collected unreasonable rates. Setting the interest rate at the U.S. Prime Rate, rather than the T-bill rate is more appropriate and is fair to railroads and shippers alike.

Conclusion

USDA agrees with the Board regarding the removal of the limitation on relief for cases brought under the Simplified SAC procedures and at least doubling the relief available under the Three-Benchmark procedures to $2 million over a 5-year period. In addition, USDA agrees that the interest rate that the railroads must pay to complainants for reparations when the railroad has collected unreasonable rates must be raised to the U.S. Prime Rate.

The Board needs to address the effects from railroads increasing rail rates across the Board upon the R/VC_{Comp} measure of the Three-Benchmark procedures. Such practices may effectively remove the availability of rate protection from agricultural shippers.

USDA, however, is concerned that improving the accuracy of the Road Property Investment component of the Simplified SAC procedures will complicate and increase the costs of pursuing rail rate relief. USDA recommends that the Board forego implementing this proposal as it may negatively impact the ability of agricultural producers to challenge rates using the Simplified SAC procedures.

[3] R/VC_{Comp} is the benchmark used to compare the markup being paid by the challenged traffic to the average markup assessed on other captive traffic involving the same or a similar commodity moving similar distances.

[4] R/VC_{RSAM} is the measure of the average markup that the railroad would need to charge all its potentially captive traffic in order for the railroad to recover all of its fixed costs.

[5] $R/VC_{>180}$ is the average mark-up above variable cost that a railroad receives on its captive traffic.

Respectfully submitted,

Edward Avalos
Under Secretary
Marketing and Regulatory Programs
U.S. Department of Agriculture
Washington, D.C. 20250

CERTIFICATE OF SERVICE

I, Bruce Blanton, certify that on this 23rd day of October, 2012, caused a copy of the foregoing document to be served by first-class mail, postage prepaid, on all parties of record in STB Docket Number EP 715.

Bruce Blanton
Director
Transportation Services Division
U.S. Department of Agriculture
Washington, D.C. 20250